

DISCUSSION POINTS ON PENDING “SIMILARITIES” APPEAL

Relevant Dates

- **Fourth Quarter 2001:** After seeking competitive bids for services for the 2002 Funding Year, multiple Louisiana schools filed Form 470 applications naming SEND as their service provider for Internet access service and internal connections.
- **Fourth Quarter 2002/ First Quarter 2003:** Pursuant to Program guidelines, three schools continued their contracts with SEND and filed Form 470s for the 2003 Funding Year, which were identical to the prior year’s filings.
- **Fourth Quarter 2003/ First Quarter 2004:** Pursuant to Program guidelines, three schools again continued their contracts with SEND and filed identical Form 470s for the 2004 Funding Year.
- **January 22, 2004:** After two years in selective review, the SLD denied ten schools’ applications for the 2002 Funding Year based upon alleged or perceived “similarities” between their Form 470 applications and the applications of other E-rate Program applicants that “suggest” that SEND was improperly involved in the Schools’ competitive bidding process.
- **February 10, 2004:** Counsel for SEND requested that the SLD clarify the nature of the alleged or perceived similarities so that the issue could be properly addressed on appeal.
- **March 2004:** Without the benefit of any clarifying information from the SLD, eight of the schools and SEND appealed the SLD “similarities” decisions regarding the 2002 Funding Year to USAC.
- **May 28, 2004:** The SLD denied funding requests of three schools (those with continuation contracts from the prior funding year) for the 2003 Funding Year based upon the same “similarities.”
- **June 24, 2004:** USAC denied two of the schools’ appeals for the 2002 Funding Year, at which time USAC provided slightly more information regarding the three (3) perceived similarities which, according to USAC, “suggest” improper service provider involvement in the competitive bidding process: (1) the schools’ Form 470 identifier; (2) the description of services on the schools’ Form 470; and (3) the delivery method used to send the schools’ Form 470 certification page to USAC.
- **July 29, 2004:** The SLD’s denials for the 2003 Funding Year are appealed to USAC.
- **August 23, 2004:** The schools (Morehouse and Richland Parish School Districts) and SEND appealed USAC’s decisions regarding the 2002 Funding Year to the FCC.
- **November 9, 2004:** USAC denied two schools’ (Morehouse and Jackson Parish School Districts) funding requests for the 2003 Funding Year based upon the same alleged “similarities.”
- **November 24, 2004:** SEND submits letter to USAC asking that it rescind the Morehouse and Jackson 2003 Funding Year denials and not deny any other pending applications based upon the same alleged “similarities” until the FCC provides further guidance on this issue, which is pending on appeal.

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The FCC Must Act Quickly To Prevent Processing Delays From Further Harming Applicants

- The funding requests of various Louisiana schools for the 2002 Funding Year were denied for exactly the same alleged “similarities.” The SLD and USAC are now denying funding requests for the 2003 Funding Year (and likely the 2004 Funding Year) based upon the same perceived similarities and the related “suggestion” of impermissible service provider involvement in the competitive bidding process. Quick action by the FCC to resolve the “similarities” issue will prevent USAC and the SLD from wrongly acting on numerous cases currently pending before them that have been or likely will be denied for the same reason.
- As noted below, contrary to the SLD’s assertion, the perceived similarities do not “suggest” impermissible service provider involvement in the competitive bidding process. The service provider’s involvement fully comported with the Program guidelines and no actual rule violation has been alleged or proved by USAC. By acting promptly on the pending appeal for the 2002 Funding Year regarding the perceived similarities, the FCC can forestall the SLD and USAC from improperly denying pending funding applications and appeals that are currently pending before them. Without prompt resolution of this issue, the SLD’s and USAC’s expected denials will prompt the needless expenditure of time and resources on the part of the FCC, USAC, the schools and SEND in litigating the same issue multiple times.
- Neither the schools nor SEND were aware that the perceived similarities from the 2002 Funding Year could taint the competitive bidding process for the 2003 and 2004 Funding Years. The schools filed their funding requests for the 2003 and 2004 Funding Years before USAC provided information in January of 2004 about the perceived Funding Year 2002 similarities. Accordingly, the schools were denied the opportunity to take corrective action to remedy or proactively address any perceived problems.

The Perceived “Similarities” Do Not Indicate Improper Service Provider Involvement

- The mere existence of similarities across Form 470 applications do not *per se* equate to improper service provider involvement and a competitive bidding violation. The *Ysleta* case explicitly recognized that there are valid reasons why similarities may exist across Form 470 applications.
- The schools’ funding requests and competitive bidding process for the 2002 Funding Year were subjected to a rigorous 2 year selective review process by USAC. If the SLD or USAC had found ACTUAL impermissible service provider involvement in the competitive bidding process, which would have been a program violation, such an ACTUAL violation would have been alleged by USAC. The “suggestion” of service provider involvement, based on perceived similarities in applications which can be explained, is not a Program rule violation or a violation of the FCC’s rules.
- In this case, the alleged similarities can be easily explained and are not tantamount to either the “suggestion” of impermissible service provider involvement or ACTUAL impermissible service provider involvement in the competitive bidding process:
 - Form 470 Identifier: Many schools in Louisiana have decided to use their assigned district number as their Form 470 identifier, and have done so for many years. The schools participated in state conducted seminars several years ago at which time they developed together a pattern for common elements in their Form 470s as a way of conserving resources and maintaining continuity in their applications year-to-year.

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- Service Descriptions: The schools, in conjunction with training sessions held by USAC and various vendors, developed a template for service descriptions. The FCC in *Ysleta* acknowledged that some level of similarity may exist among applicants.
- Mailing: The schools prepared their own Form 470s on-line and signed and submitted their own certification pages for the SLD’s consideration. Because timely delivery of regular mail is not guaranteed, and loss of a Form 470 certification precludes E-rate support, overnight delivery is preferred. The schools, however, often avoid using overnight delivery services because the internal approval process for the expenditure is time consuming. Because SEND is located near an overnight delivery location, it offered to overnight the certifications that had already been completed by the schools to the SLD for prompt processing.
- All communications between SEND and the schools were of the type approved by Program rules, were vendor-neutral, and for the purpose of providing general, basic assistance to the schools. There was no impermissible service provider involvement in the competitive bidding process undertaken by the schools.